

Résumé

The presented work addresses the issue of the double-tracking nature of a dominant position in European competition law. The aim of the integration efforts during the establishment of the EU was the creation of an internal market, especially the customs union. In order to achieve this state, it was necessary to take a number of integration measures and create a legal framework, i.e. conditions, under which economic competition in the internal market could operate effectively. In this context a variety of legislation valid for the whole EU territory has been accepted. However, in the context of the economic competition this work analyzes the legislation on market dominance carried out first in Article 102 of TFEU (Treaty on the Functioning of the European Union) prohibiting restrictive business practices in the form of abuse of a dominant position and also in Council Regulation (EEC) No 4064/89 and later in Council Regulation (EC) No 139/2004 regulating the control of concentrations between undertakings. In case of both the legislations the crucial question is the "dominant position" of an enterprise in the market, while Article 102 of TFEU represents the *ex post* control, i.e. applies only to the possible abuse of the dominant position, and in this sense the dominant position itself is not the problem, and also the legislation on control of corporate concentrations, which represents the *ex ante* control of the "dominant position", i.e. can prohibit a merger, as a result of which there would be a gain or strengthening of a dominant position in the market, or as a result of which such structural changes would occur in the market that could substantially reduce or eliminate competition. With regard to the presented subject, the work includes the interpretation of the concepts of a dominant position itself, as well as the meaning and essence of the system of prosecution of restrictive practices under Article 102 of TFEU, and the control of corporate concentrations within the meaning of Regulation 139/2004. It also further discusses the issue of minimizing public authority intervention in the form of creating regulations of economic competition, and also the conflicts that arise from this dual approach to treatment of a dominant position, particularly in relation to the control of corporate concentrations, and the possible conflicts of the application of this regulation with the right of ownership of the relevant business to their resources, the freedom of contract and the free movement of capital.